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THE
L A W
RESPECTING
H O R S E S.

By A. STOVIN.

K

It is incumbent upon every man to be acquainted with those laws, at least, with which he is immediately concerned.

INTRODUC. TO BLACK. COM.

HULL:

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M,DCC,XCIV.



To Charles Butler, Esq. F. S. A.

LINCOLN's INN.

SIR,

THE following short compilation on a subject, far less abstruse than the laws incident to landed property, which employed your talents in writing learned annotations on *Coke upon Littleton*, is (with your permission) inscribed to you, in grateful remembrance of the favors which you conferred upon me, during the time, and since I was pupil in your chambers.

I am, Sir,

Your highly obliged,

And most obedient humble servant,

A. STOVIN.

HULL, 2d January, 1794.

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ADVERTISEMENT.

THE following tract being intended for the use of the public, the compiler has not attempted to introduce a great number of cases, lest he should weary or confuse his readers. Contradictory or subtle distinctions, could not be of service to any, but gentlemen of the profession. The subject of pleading is entirely omitted; as it was conceived, that those to whom alone determinations on that head could be acceptable, have them already in their books of reports, and are much more conversant with them than the compiler can be supposed to be. All that is meant is, to give a general idea of the law respecting horses, so far as is necessary to be known, by those who are in the daily habit of trafficking in those noble animals, and to whom questions of law will frequently occur, the solution of which may be desirable, when it may neither be convenient, nor worth the while to ask professional assistance. To attain this end, he has selected such cases as seemed to him to coalesce, and form a sort of system, and he hopes nothing will be found to be given as law, but what is law in Westminster-hall. Doubtful cases have either been omitted

or given as such. But the principal part of this compilation has the statutes for its materials. These have been abridged for the purpose, and not copied from any former abstract. Experience having evinced to the compiler, that epitomes of acts of parliament are often perplexed, or even unintelligible, from their conciseness, the following abstracts are therefore made pretty much at length, except in some few places: it is hoped the sense will always be found to be perspicuous. As to the few observations made by the compiler, it becomes him to be silent; so far as they are supported by authority or reason, they will be approved, and so far as they have not either of those supports, they will be rejected. It was not till the manuscript was nearly finished, that the compiler learnt that a treatise on the same subject was published about eight or nine years since, by Mr. *Lucas*, a gentleman of the Temple. This publication is not mentioned in the *Bibliotheca Legum*, nor in any other list of law books which the compiler has seen; and it was by mere accident he heard of it. Every endeavour has been used to procure a copy, but in vain. Mr. *Lucas*, it is understood, is gone abroad. Under these circumstances, the present compiler, however he may have been surpassed by his predecessor, sees no impediment in the way of the present publication. Whatever may be the merit of Mr. *Lucas's* book he does not know;

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know ; but certain it is, that what is now offered, is very unlike it; for a considerable part of these pages is composed of cases which have been decided, and acts of parliament which have passed, since that work made its appearance.

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ADDENDUM.

At the end of the tract, add—SECTION XVI.—Duty on the exportation of horses.—It shall be lawful for any person or persons, native or foreigner, at any time or times, to ship, lade, and transport by way of merchandize, horses into any parts beyond the seas, in amity with his majesty, paying for each horse, mare, or gelding, 5s. and no more.
22 Cha. 2. c. 13. f. 8.

ERRATA.

Page 12. l. 8. for "riden," read "ridden."

— 15. l. 5. in the margin, for "or," read "of."

— 43. l. 6. dele "it."

— 44. l. 2. for "and," read "nor."

— 47. l. 17. and in other places, for "licence" and "licenced," read "license" and "licensed."

— 57. l. 3. dele "for."

— 59. l. 10. for "produce his appointment," read "and producing his appointment as distributor."

THE
LAW

RESPECTING

HORSES.

SECTION I.

OF THE SALE OF HORSES WITH WARRANTY.

IF he that selleth any thing, doth upon the sale, warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not so, he shall make compensation to the buyer: else it is an injury to good faith, for which an action on the case will lie to recover damages. 3 *Black. com.* 166. †

The warranty must be *upon the sale*; for if it be made *after*, and not *at* the time of the sale, it is a void warranty: for it is then made without any consideration; neither does the buyer then

† The edition of Blackstone's commentaries cited, is the 9th, and that of Burn's justice, the 17th.

B

take

take the goods upon the credit of the vendor.
Ibid. 1. *Salk.* 211.

Also, the warranty can only reach to things in being at the time of the warranty made, and not to things *in futuro*; as, that a horse is found at the buying of him; not that he *will be* found two years hence. 3 *Black. com.* 166.

So warranty that a horse *shall carry* a man thirty leagues a day, is void; for a thing to come cannot be warranted. 1. *Vin. ab.* *581. 2d ed. 8vo.

If the vendor know the goods to be unsound, and hath used any art to disguise them, or if they are in any shape different from what he represents them to be to the buyer, this artifice shall be equivalent to an express warranty, and the vendor is answerable for their goodness. 3. *Black. com.* 166.

A general warranty will not extend to guard against defects that are plainly and obviously the object of one's senses; as, if a horse be warranted perfect, and wants either a tail or an ear, unless the buyer in this case be blind. 3 *Black. com.* 165*.

If a horse be warranted sound, and he wants the sight of an eye, though this seems to be the object of one's senses, yet as the discernment of such defects is frequently matter of skill, it hath been held that an action on the case lieth, to recover damages for this imposition. *Ibid.*

In a case before *Mr. Justice Buller*, on the warranty of a pair of horses, that they were *five* years

years old, when in fact they turned out to be only *four*, and they were not returned within a certain time, the learned judge held, that if the plaintiff would rescind the contract entirely, he must do it within a *reasonable time*, and that as he had not rescinded the contract, he could only recover damages; and then the question was, what was the difference in value between horses of four and five years old. 1 *term rep. B. R.* 136.

But in a subsequent case, in the court of common pleas, it is said by Lord *Loughborough*, chief justice, that "*where there is an express warranty*" (as there was in the case before Mr. *Justice Buller*) "*the warrantor undertakes that it is true at the time of making it.*" If a horse which is warranted sound, at the time of sale, be proved to have been at that time unsound, it is not necessary that he should be returned to the seller. *No length of time elapsed after the sale, will alter the nature of a contract originally false.*" *Fielder* agt *Starkin*, 1 *Hen. Black. rep.* 19.

The determination from which this extract is taken, appears to clash with the one made by Mr. *Justice Buller*, and it might be imagined, that the subject of warranty is yet afloat, and that there is ample room for further litigation. But as the decision of Mr. *Justice Buller* (and which was at *nisi prius*) preceded in point of time, that of the court of common pleas, it should

seem that the law now is, as laid down by the latter.

There is not, indeed, in solid justice, any difference whether a person who sells a horse only four years old and warrants him to be five, be obliged, on detection of the fraud, to take him again and restore the purchase money, or to give the purchaser what is adequate to the difference in value between a horse of four and one of five years of age. When it is said, that if the horse be not returned within a *reasonable time*, the defendant shall only answer in damages, a foundation is laid for litigation. And hence two questions may arise, viz. what is reasonable time, and what damages are to be given in case of a false warranty, if the horse be not returned almost immediately. When the law appears thus vague in its acceptation, many gentlemen will submit to let knavish horsedealers take advantage of them, rather than engage in law-suits, which will seem to them so uncertain in event. But if the law be clearly settled (and it is presumed to be so settled) by the case of *Fielder* agt *Starkin*, that where there is an express warranty, no length of time elapsed after the sale, will alter the nature of a contract originally false, there appears to be a broad substantial foundation to build upon, and a gentleman to whom a horse had been falsely warranted, would not hesitate to compel the

RESPECTING HORSES.

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the seller to refund the purchase money which he had received.

As the case of *Fielder* agst *Starkin* is exceedingly important, and the last determination on the subject, it is here given at full length.

It was an action on the warranty of a mare, "*that she was sound, quiet, and free from vice and blemish.*" The cause was tried at *Tetford* spring assizes, 1788, before Mr. *Justice Ashurst*, and a verdict was found for the plaintiff. It appeared on the trial, from the learned judge's report, that the plaintiff had bought the mare in question of the defendant, at *Winnel* fair, in the month of *March*, 1787, for thirty guineas, and that the defendant warranted her sound, and free from vice and blemish. Soon after the sale, the plaintiff discovered that she was unsound and vicious,* but kept her three months after this discovery, during which time he gave her physic and used other means to cure her. At the end of the three months he sold her, but she was soon returned to him, as unsound. After she was so returned the plaintiff kept her till the month of *October*, 1787, and then sent her back to the defendant as unsound, who refused to receive her. On her way back to the plaintiff's stable,

* The instances of which were, that "she was a roarer, had a thorough pin through the back, and had a swelled back from kicking."

the mare died, and on her being opened, it was the opinion of the farriers who examined her, that she had been unsound *a full twelvemonth before her death*. It also appeared, that the plaintiff and defendant had been often in company together, during the interval between the month of *March*, when the mare was sold to the plaintiff, and *October*, when he sent her back to the defendant; but it did not appear that the plaintiff had ever in that time acquainted the defendant with the circumstance of her being unsound. The jury found a verdict for the plaintiff, with thirty guineas damages.

A rule having been obtained to shew cause why the verdict should not be set aside, the rule was discharged. And by Lord *Loughborough*, chief justice, where there is an express warranty, the warrantor undertakes that it is true at the time of making it. If a horse which is warranted sound at the time of sale, be proved to have been *at that time unsound*, it is not necessary that he should be *returned to the seller*. *No length of time elapsed after the sale, will alter the nature of a contract originally false. Neither is notice necessary to be given*: though the not giving notice will be a strong presumption against the buyer, that the horse at the time of the sale had not the defect complained of, and will make the proof on his part much more difficult. The bargain

bargain is complete, and if it be fraudulent on the part of the seller, he will be liable to the buyer in damages, *without either a return or notice*. If on account of a horse warranted sound, the buyer should sell him again at a loss, an action might *perhaps* be maintained against the original seller, to recover the difference of the price. In the present case it appears, from the evidence of the farriers who saw the mare opened, that she must have been unsound *at the time of the sale to the plaintiff*.

Gould, justice, of the same opinion, remembered many cases of express warranty, where a return was not held to be necessary.

Heath, justice. If this had been an action for money had and received to the plaintiff's use, an immediate return of the mare would have been necessary; but as it is brought on the *express warranty*, there was no necessity for a return to make the defendant liable.

Wilson, justice, of the same opinion, recollected a cause tried before Mr. *Justice Buller*, at *nisi prius*; where the defendant had sold the plaintiff a pair of coach horses, and warranted them to be six years old, which were in reality only four years old. It was contended, that the plaintiff ought to have returned the horses; but Mr. *Justice Buller* held, that the action on the warranty might be supported without a return. *Fielder agt Starkin*. 1 *Hen. Black.* 17. In

In an action on the warranty of a horse against the seller, tried before *Grose, justice*; the circumstances of the case were these; the horse was sold at a public auction, warranted *six* years old and sound, and one of the conditions of the sale at the auction, was, that the purchaser of any horse warranted *sound*, who should conceive the same to be unsound, should return him within *two* days; otherwise, he should be deemed sound. *Ten* days after the sale, the plaintiff discovered that the horse in question, was *twelve* years old, and then the defendant refused to receive him; and the plaintiff sold him. It was proved that the horse was *twelve* years old: but the jury were of opinion, that the plaintiff, by not returning the horse sooner, had made him his own, and gave a verdict for the defendant. And a rule having been obtained to set aside that verdict, the rule was made absolute. By Lord *Kenyon, chief justice*, there is no doubt but that the defendant ought to have taken the horse again. The question turns on the meaning of this condition of sale; and I am of opinion, that it must be confined solely to the circumstance of *unsoundness*. There is good sense in making such a condition at public sales; because, notwithstanding all the care that can be taken, many accidents may happen to the horse between the time of sale, and the time when the horse may be returned, if no time were limited. But the circumstance

circumstance of the age of the horse is not open to the same difficulty. This is therefore a verdict against evidence. *Buchanan agt Parnshaw. 2 term rep. B. R. 745.*

What constitutes unsoundness, so as to make a horse returnable, is not to be learnt from law books, but from those persons who are conversant with horses.

SECTION

SECTION II.

OF THE SALE OF HORSES WITHOUT WARRANTY.

IF the vendor know the goods to be unsound, and hath used any art to disguise them, or if they are in any shape different from what he represents them to be to the buyer, this artifice shall be equivalent to an *express warranty*, and the vendor is answerable for their goodness. 3 *Black. com.* 166.

Hence it appears, that the sale of horses without warranty, is reduced into a very small compass, for at the time of sale, the seller almost always either affirms that the horse is sound, which amounts to a sale with warranty, (of which see the former section) or otherwise sells him as *unsound*, and then the buyer must take him as he is. Should it happen, that there is no affirmation that the horse is sound, and he proves to be unsound, the seller is liable, it is conceived, to take him again within a *reasonable time*, provided he is sold for what is called a *sound price*:

What is a *reasonable time* depends upon the situation of the parties, their places of abode and the facility of communication between them; and seems to be, as in the case of bills of exchange, partly a question of law, and partly a question of fact.

SECTION

SECTION III.

BUYING OF STOLEN HORSES.

THE owner or keeper of every fair and market shall, before Easter, yearly appoint a certain ^{Places of} and special open place, where horses have been, ^{sale to be} and appointed. shall be used to be sold, and shall appoint one sufficient person or more to take toll, and keep the same place, from ten o'clock before noon, until ^{Toll-taker} sunset of every day, of the fair and market on ^{and his du-} ty. penalty of 40s. And every toll gatherer, his deputy or deputies, shall take toll for every such horse, betwixt ten o'clock in the morning and sunset, if it be tendered, and shall have before him or them, at the taking of the same toll, the parties to the bargain, for every horse, and also the horse, and shall write in a book to be kept for that purpose, the names, surnames, and dwelling-places of all the said parties, and the colour with one special mark, at the least, of every such horse, on penalty of 40s. for every default. 2 and 3 P. and M. c. 7. f. 2.

And the toll gatherer or book-keeper, shall within one day after every such fair or market, deliver his book to the owner or keeper of the fair or market, who shall cause a note to be made of the true number of all horses sold, and shall subscribe his name thereto, on penalty of 40s. and also of answering

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answering the party grieved by reason of his negligence, s. 3.

Horses to
be shewn
one hour
publicly.

The sale or exchange in any fair or market, of any horse that shall be stolen, shall not alter or take away the property of any person, unless the same horse shall be in the time of the said fair or market, wherein the same shall be so sold or exchanged, openly ridden, led, walked, driven or kept standing, by the space of one hour together, at the least, betwixt ten o'clock in the morning, and the sun-setting, in the open place of the fair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other

Seller and
buyer to
go to the
toll-taker.

privy or secret place, and unless all the parties to the bargain present in the said market or fair, shall come together and bring the horse to the open place appointed for the toll-taker, or for the book-keeper

Sale to be
entered.

where no toll is due, and there cause to be entered their names and dwelling places in manner afore-said, with the colour or colours, and one special mark at the least of every the same horse, in the toll-taker's book, and also pay him the toll, if they ought to pay any; and if not, then the buyer to give one penny for the entry of their names, dwelling places, &c. s. 4. and 8.

And toll to
be paid.

Further re-
gulations as
to the en-
try of the
sale.

No person shall, in any fair or market, sell or exchange any horse, unless the toll-taker, or (where no toll is paid) the book-keeper, bailiff, or chief officer of the same fair or market, shall take

upon

upon him perfect knowledge of the person that shall sell, or offer to sell, or exchange the same horse, and of his true christian name, surname, and place of dwelling, and shall enter the same in a book kept for sale of horses; or else, that he so selling, or offering to sell, or exchange any horse, shall bring unto the toll-taker or other officer aforesaid, one credible person that shall or will testify and declare, unto such toll-taker, book-keeper or other officer, that he knoweth the party that so selleth or exchangeth such horse, and his true name, surname, mystery and dwelling place, and there enter in the book, as well the true christian name, surname, mystery and place of dwelling, of him that so selleth or exchangeth such horse, as of him that so shall testify or avouch his knowledge of the same person; and shall also cause to be entered, the very true price or value that he shall have for the horse so sold: and no person shall take upon him to avouch, testify or declare, that he knoweth the party that so shall offer to sell or exchange any such horse, unless he do indeed truly know the same party, and shall truly declare to the toll-taker or other officer aforesaid, as well the christian name, surname, mystery and place of dwelling of himself, as of him of whom he maketh such testimony and avouchment; and no toll-taker or other person shall take or receive any toll, or make entry of any sale or
C exchange,

exchange, unless he knoweth the party that so selleth, or exchangeth such horse, and his true christian name, surname, mystery, and place of his dwelling; or the party that shall and will testify, and avouch his knowledge of the same person, so selling or exchanging such horse, and his true christian name, surname, mystery and place of dwelling, and shall make a perfect entry into the said book, of such his knowledge of the person, and of the name, surname, mystery and place of the dwelling of the same person; and also the true price or value, that shall be *bonâ fide* taken or had for any such horse, so sold or exchanged, so far as he can understand the same, and then give to the party, so buying or taking by exchange such horse, requiring and paying *two-pence* for the same, a true and perfect note, in writing, of all the full contents of the same, subscribed with his hand; on pain of forfeiture by each of them, the feller, the person giving testimony, and the book-keeper or other officer for every such default, of five pounds; 31 *Eliz. c. 12. s. 2.*

And the price.

Certificate or note of entry.

Sale or exchange not according to the statute, void.

Every sale, or exchange of any horse, in fair or market, not used in all points according to the true meaning of the aforefaid statutes, shall be void; and the owner may seize or take again the same, or have an action of detinue or replevin, 2 and 3 *P. and M. c. 7. s. 5. 31 Eliz. c. 12. s. 2.*

Applicati-

The one half of all which forfeitures to be to the

the king, and the other half to him or them that will sue for the same, before the justices of peace in sessions, or in any ordinary courts of record. 2 and 3 P. and M. c. 7. s. 7 and 31. Eliz. c. 12. s. 2.

If any horse shall be stolen, and after shall be sold in open fair or market, and the same sale shall be used in all points and circumstances as aforefaid, yet, nevertheless, the sale of any such horse, within six months next after the felony done, shall not take away the property of the owner, from whom the same was stolen, so as claim be made within six months, by the party from whom the same was stolen, or by his executors or administrators, or by any other by any of their appointment, at or in the town or parish where the same horse shall be found, before the mayor or other head officer of the same town or parish, if the same horse shall happen to be found in any town corporate, or market town; or else before any justice of peace of that county, near to the place where such horse shall be found, if it be out of the town corporate, or market town; and so as proof be made within forty days, then next ensuing, by two sufficient witnesses to be produced, and deposed before such head officer or justice, that the property of the same horse so claimed, was in the party by whom such claim is made, and was stolen from him within six

Claim made within six months or horses sold pursuant to the statute.

months next before such claim. But the party from whom the said horse was stolen, his executors or administrators, shall and may at all times after, notwithstanding any such sale in any fair or open market thereof made, have property and power to have, take again, and enjoy the said horse, upon payment, or readiness or offer to pay, to the party that shall have the possession and interest of the same horse, if he will receive and accept it, so much money as the same party shall depose and swear, before such head officer or justice of peace, that he paid for the same *bonâ fide*, without fraud or collusion.

31 *Eliz. c. 12. s. 4.*†

† Though these antiquated statutes, are, it is believed, now hardly ever complied with, and, in the present extended traffic in horses, would sometimes perhaps be impossible to be observed; yet, as they are existing in the statute book, it is proper to notice them in this compilation: besides, though they may not be of much use, they may be matter of curiosity: acts of parliament will often give us the most faithful account of the manners of the times in which they were passed. The great pains, which it appears by these acts, were taken to prevent the stealing of horses, and the preamble to the statute of *Elizabeth*, which recites, “that through most counties in this realm, horse stealing is grown so common as neither in pastures or closes, nor hardly in stables, the same are to be in safety from stealing,” may incline us to infer, that our ancestors did not then enjoy those *golden days*, which historians speak of, and our imaginations are apt to conceive

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conceive. Other historical facts will assist in dispelling the illusion. As the police and the manners of the people have improved, and commercial intercourse has become more extended, these acts have gradually fallen into disuse. Besides the great inconvenience which it would be to horse dealers, to observe *the minutia* of them, it would frequently happen, that the party selling a horse at a fair, was neither known to the toll-keeper, nor to any person at the fair, and yet there might be no reason to suspect that he had stolen the horse. In such case it would be impossible to comply with the injunctions of the legislature. Were it attempted at one of our great horse fairs, to comply literally with the regulations of the acts, it would be necessary to appoint at least as many toll-takers or book-keepers, as there are clerks employed in the counting-house of an extensive merchant.

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SECTION

SECTION IV.

OF THE PUNISHMENT OF HORSE-STEALERS
AND THEIR ACCESSORIES.

BY the 37 *Hen. 8. c. 8. s. 2.* No person or persons convicted for the stealing of any horse, gelding, mare, foal or filly, shall be admitted to have the benefit of his or their clergy. And by 1 *Ed. 6. c. 12. s. 10.* No person or persons convicted for feloniously stealing of *horses, geldings or mares*, shall have and enjoy the privilege, and benefit of his or their clergy.

And by the 2 and 3. *Edw. 6. c. 33.* Forasmuch as it is, and hath been, ambiguous and doubtful upon the words of the last mentioned act, whether a person convicted for *felonious* stealing of *one* horse, gelding or mare, ought to be admitted to have, or enjoy the privilege and benefit of his clergy, it is enacted, that all and singular person and persons, feloniously taking or stealing any horse, gelding or mare, shall not be admitted to have, or enjoy the privilege or benefit of his or their clergy, but shall be put from the same in like manner and form, as though he or they had been indicted, or appealed for *felonious* stealing of *two* horses, *two* geldings or *two* mares, and thereupon convicted.

And

And by 31 *Eliz. c. 12. s. 5.* it is enacted, that not only all accessories before such felony done, but also all accessories after such felony, shall be deprived and put from all benefit of their clergy, as the principal, by statute heretofore made, is or ought to be.

If a horse be stolen out of the stable, or other curtilage of a dwelling-house, in the night time, it falls under the denomination of *burglary*; if in the day time, it falls under the denomination of *larceny from the house*: and, in either case, there is a reward of 40*l.* for convicting an offender, and the prosecutor is entitled to a certificate, which will exempt him from all parish and ward offices, in the parish and ward where the burglary or larceny is committed, and which may be once assigned over, and will give the same exemption to the assignee, as to the original proprietor. 2 *Burn's just.* 621. 10 and 11 *W. c.* 23.

Dr. Burn says, that the reason of the doubt, as to the statute of the 1 *of Ed. 6* not extending to the stealing of a single horse, is obvious; because a penal statute, (and especially where life is concerned) ought not to be extended beyond the express words thereof, but to be taken strictly in favor of the subject. Mr. Reeves, in his history of the English law, says, this *singular* scruple was entertained in consideration of this being a penal law; but the like had never been countenanced

nanced in cases regarding property ; for the statute of Gloucester, giving an action of waste against one who holds for a term of years, had always been construed to extend to a holding for *a year*.

4 *Reeves hist.* 485. However the scruple is not altogether singular ; for, by the statute of 14 *Geo.* 2. c. 6 stealing sheep, *or other cattle*, was made felony, without benefit of clergy ; but these general words, “or other cattle,” being looked upon as much too loose to create a capital offence, the act was holden to extend to no cattle but *sheep*. And, therefore, in the next session, it was found necessary to make another statute, (15. *Geo.* 2. c. 34) extending the punishment to bulls, cows, oxen, steers, bullocks, heifers, calves and lambs, by name.

SECTION

SECTION V.

OF THE BAILMENT OF HORSES.

BAILMENT, from the French *bailler*, to deliver, is a delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the baillee.
2 *Black. com.* 451.

If a horse, or other goods, be delivered to an innkeeper or his servants, he is bound to keep them safely, and restore them when his guest leaves the house. *Ibid. Cro. Eliz.* 622.

If a man take in a horse, or other cattle, to graze and depasture in his grounds, which the law calls *agistment*, he takes them upon an implied contract, to return them, on demand, to the owner. 2 *Black. com.* 452.

If a horse be delivered to an agisting farmer, for the purpose of depasturing in his meadows, he is answerable for the loss of the horse, if it be occasioned by the *ordinary* neglect of himself or his servants. *Jones on bailm.* 91.

Where one leaves his horse at an inn, to stand there by agreement at livery, although neither himself, nor any of his servants lodge there, he is reputed a guest for that purpose, and the innkeeper hath a valuable consideration; and if the
horse

horse be stolen, he is chargeable with an action upon the common custom of the realm. *Cro. Ja.* 189.

If a man take my horse, and ride him to an inn, where he is stolen, I shall not have an action against the host, though I am the owner; because I am not his guest. *By Croke, Dodderidge and Houghton, justices: but Montague, chief justice, of a contrary opinion. 1 Vin. abr.* 226.

But if my servant, upon my business, come to an inn, and ride upon my horse, and he is there stolen, I may have an action against the host; because the absolute property is in me. *Ibid.*

If a man come to a common hostler (innkeeper) to lodge, and desire that his horse be put to pasture, and the host puts him to pasture accordingly, where the horse is stolen, the host shall not be charged; because he is not bound by the law to answer for any thing which is out of his inn, but only for those things which are within his inn. *1 Vin. abr.* 228. But, in this case, he is chargeable for ordinary negligence, as a bailee for hire, though not as an innkeeper, by the general custom of the realm. *Jones on bailm.* 92.

But if the owner do not require the host to put his horse to grass, but the host do it of his own head, he shall answer for it if the horse be stolen. *1 Vin. abr.* 228.

It has formerly been holden, that an innkeeper

is not compellable to receive the horse of any, if his master be not lodged there. *By Coke, justice, ibid. 2 Brownl. 254.* But it should now seem to be otherwise. See *2 Lord Raym. 868*, where it is said, that if a man set up his horse at an inn, though he lodges in another place, that makes him a guest, and the innkeeper is obliged to receive him: for the innkeeper gains by the horse; and, therefore, that makes the owner a guest, though he were absent.

If an hostler (innkeeper) keep a horse left with him at livery so negligently, that he is *taken out of his stable, and ridden a long journey and damaged*, an action lies: so, if he keep him so negligently, that he is beat or abused, or wanted reasonable provender in his inn. *1 Vin. abr. 228. 6 Mod. 224. 225.*

If a man ride to an inn, where his horse has eat, the host may *retain the horse*, till he be satisfied for the eating, and that without making any demand. *14 Vin. abr. 437. 1 Vent. 71. 2 Lord Raym. 867.*

If a man take *the horse of a stranger*, and ride upon it to an inn, where the horse has eat; and after depart without paying for the eating, leaving the horse there, and then *the horse continues there for half a year*, the owner shall not have his horse, but the host may justify the detaining of it, till he be satisfied for all the eating; because he

was

was compellable to receive him who comes as a guest to him; and he could not take notice who was owner of the horse; and if he could, yet he could not refuse him for this cause. 14 *Vin. ab.* 438. 2 *Lord Raym.* 867.

If I deliver my *horse to pasture*, the innkeeper may detain him till satisfaction for the eating. 14 *Vin. ab.* 438.

If I put my horse in an inn, though the horse has *eat his value*, yet the innkeeper *cannot sell the horse* for the eating. 14 *Vin. ab.* 438. 8 *rep.* 147.

But, by the custom of *London and Exeter*, if a man commit a horse to an innkeeper, if he eat out his price, the innkeeper *may take him as his own*, upon the reasonable appraisement of four of his neighbours; which was, it seems, a custom arising from the abundance of traffic with strangers, that could not be known, so as to be charged with an action.

But it hath been holden, though an innkeeper in London may, after long keeping, have the horse appraised and *sell him*; yet, when he has in such case had him appraised, he cannot justify the *taking him to himself*, at the price he was appraised at. 1 *Vin. ab.* 233. *Barn. rep. B. R.* 301. And in this there seems to be good sense; for there might be fraud, were the innkeeper permitted to take the horse at an appraisement. An innkeeper

innkeeper in London, would at least act prudently in having the horse sold, rather than in taking him himself at an appraisement.

In an action of trover for three horses, the defendant pleaded, that he kept a public inn at *Glastenbury*, and that the plaintiff was a carrier, and used to set up his horses there; and 36l. being due to him for keeping the horses, which was more than they were worth, he detained and sold them, *as it was lawful for him to do*; and on demurrer, judgment was given for the plaintiff, an innkeeper having no power to sell horses, except within the city of London: † and besides, when the horses had been once out, the power of detaining them, for what was due before, did not subsist at their coming in again.

1 *Str.* 556.

The custom of *London* to stop and sell horses for their meat, is only that the *same horse may be sold for his own keeping*, and not for the keeping of other horses, though of the same owner.

14 *Vin. ab.* 438. *Buls.* 207.

It hath been adjudged, that *if a man take my horse, and put him in an inn, in London, and there leave him till he has eat his value, the innkeeper cannot sell this horse by the custom of London, for then any man might take away the*

† And Exeter, see before.

property of the horse of another. 14 *Vin. ab.*
438. This case may perhaps be doubted.‡

Denial

‡ It is not uncommon to see in newspapers, notices to the owners of horses at agistment, that if the money due for the agistment, be not paid within a limited time, the horses will be sold for the purpose of paying it. Such a sale before a horse has eat his *full value*, is very unwarrantable and hazardous: even when he has eat his value, it is conceived to be *illegal*. The cases which say, that an innkeeper in *London and Exeter* can, only by special custom, sell the horses of their guests when they have eat their price, and the case in *Strange*, which determines, that an innkeeper elsewhere may not do so, certainly make against the legal power of an agisting farmer to sell, though he give notice in the newspapers. The reason, too, which is given for the custom in *London and Exeter*, in favor of the innkeepers, viz. they might not know against whom to bring an action, would rarely, if ever, hold in the case of agisting farmers. It may be reasoned on the part of an agisting farmer selling a horse to defray the expenses of the agistment, in this way; there is more money due for the agistment, than would be given in damages in an action of *trover* for the horse; therefore, it is very improbable that the owner will bring an action. But if he were to bring one, it is conceived he would recover the value of the horse in damages, and also costs of suit. The money due for the agistment, could not be *set off* in bar of the action. Perhaps all that the defendant in such case could do, would be to bring a cross action against the plaintiff, for the money due to him. In an action of *trover*, it is only necessary

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Denial by an innkeeper to deliver a horse in his hands, is no conversion nor evidence of a

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conversion,

to prove two things, to entitle the plaintiff to recover; viz. *property* in the plaintiff, and a *wrongful conversion* by the defendant. 1 *Burr.* 31. It may be asked, how is a person to act, and what remedy has he, after the horse he has taken to agist has eat his value, and the person to whom he belongs won't pay the charge? To this it may be answered, he has a remedy by action, which, in *personal* contracts, is the common one. And it is a prevalent opinion, that he may also detain the horse. The power of detaining, which an innkeeper, a common carrier, and some other bailees have, seems to favor this opinion. But its validity may very reasonably be doubted; for it has formerly been expressly determined otherwise. *Chapman agst Allen. Cro. Car.* 271. And Sir William Blackstone says, that if a man take in a horse or other cattle, to graze and depasture in his grounds, he takes them upon an implied contract, to return them *on demand* to the owner. 3 *Black. com.* 452. And he cites the case of *Chapman agst Allen*. It should seem from the words of this great judge, that he thought a detention unjustifiable, and from his referring to the case of *Chapman agst Allen*, that he considered that case as law. The compiler is not aware that there is any subsequent decision, contrary to it. If it should occasionally happen that the bailor is not to be found, it is perhaps better that the bailee should be put to some inconvenience, than that in all cases he should have a power of selling the horse, when it is supposed he has eat his value. According to the
vulgar

conversion, unless the plaintiff tender, in particular, what the horse has eat out ; and the jury is to judge if it be sufficient. 1 *Vin. ab.* 245. 2 *Show.* 161.

If a smith prick my horse, an action upon the case lies against him. 1 *Vin. ab.* 563.

If I deliver my horse to a smith to shoe, and he deliver him to another smith, who pricks him, I may have an action upon the case against him, though I did not deliver the horse to him. 1 *Vin. ab.* 560.

If a smith promise to shoe my horse, and does not, and I travel without the horse having been shod, and he is damnified for want of shoes, an action upon the case lies. 1 *Vin. ab.* 578.

If a farrier *take upon him* to cure my horse, being gravelled in the feet, and after *so negligently and carelessly* take care of the horse that he dies, an action lies against him upon this negligence and damage. 1 *Vin. ab.* 563.

But if he do all that he can, and did not warrant him, and the horse is impaired, an action upon the case does not lie. Note the diversity. *Ibid.* But as every tradesman and artificer, is by

vulgar phrase, a man ought not to *take the law into his own hands*. The value of horses is, in a great measure, *imaginary*, and a horse may, in the opinion of the bailee and *his friends*, have eat his value, long before he has, in the opinion of the bailor and others.

law

law bound to exercise proper skill and judgment in his occupation, it is presumed, that on proof of unskilfulness or neglect, an action would lie, without any express undertaking. See 3 *Black. com.* 165.

If a farrier, though he be not a common farrier, assume to cure my horse of a malady, if he kill the horse through negligent administration of his medicines, an action upon the case lies against him. 1 *Vin. ab.* 578.

Where a pawnee is at any expence to maintain the thing given in pledge, as, if it be a horse or a cow, he may ride the horse moderately, and milk the cow regularly, by way of compensation for the charge. *Jones on bailm.* 82.

If *Caius* hire a horse, he is bound to ride it as moderately, and treat it as carefully, as any man of common discretion would ride and treat his own horse; and if through his negligence, as by leaving the door of his stable open at night, the horse be stolen, he must answer for it; but not if he be robbed of it by a highwayman; unless, by his imprudence, he gave occasion to the robbery, as by travelling at unusual hours, or by taking an unusual road: if, indeed, he hire a carriage and any number of horses, and the owner send with them his postilion or coachman, *Caius* is discharged from all attention to the horses. *Jones on bailm.* 88.

If a man should lend another a horse to go westward, or for a month if the bailee go northward, or keep the horse above a month, if any accident happen to the horse in the northern journey, or after the expiration of the month, the bailee will be chargeable ; because he has made use of the horse contrary to the trust he was lent to him under; and it may be, if the horse had been used no otherwise than as he was lent, that accident would not have befallen him. 2 *Lord Raym.* 915.

In an action against an auctioneer, for carelessly and negligently selling the plaintiff's gelding, which he had directions *not to let go* under 15*l.* for a less sum, *viz.* 6*l.* 16*s.* 6*d.* contrary to such directions, a verdict was given for the plaintiff, subject to the opinion of the court, upon this question ; whether the auctioneer was bound to bid for, and buy in the horse, if no one bid to the amount of 15*l.* for it ? Lord *Mansfield*, upon reporting the case, said, that the practice at auctions, of owners buying in their own goods, struck him as a fraud upon the public ; and that the nature of these sales, required the goods should go to the best *real* bidder. And, after hearing counsel, his lordship said, there is no express undertaking on the part of the defendant, nor is it, as has been ingeniously said, a direction that there should be no bidding under 15*l.* which might be fair.

fair. But the direction given to the defendant is, "not to let the horse go under 15l." which implies, there might be a bidding under that sum. Upon full consideration, I am of opinion, that a bidding for the owner, in the manner contended for, and agreeable to the directions given in this case, would have been a fraud upon the sale; and, consequently, that this action against the defendant, as an auctioneer, cannot be maintained. *Aston, Willes and Asburst, justices*, of the same opinion. *Corup.* 395.

SECTION

SECTION VI.

KILLING OR MAIMING HORSES.

WHERE any person or persons shall, *in the night time*, maliciously, unlawfully, and willingly kill, or destroy *any horses*, sheep or other cattle, of any person or persons whatsoever, every such offence shall be adjudged felony, and the offenders, and every of them, shall suffer as in case of felony. 22 and 23 Ch. 2. c. 7. s. 2. Offenders may be transported for seven years, either at the assizes; or at the sessions, by three justices of the peace; one whereof to be of the quorum. S. 4 and 6.

Attainder shall not work corruption of blood, loss of dower, or disinheritance of heir or heirs. S. 3.

And, if any person or persons shall, *in the night time*, maliciously, unlawfully, and willingly maim, wound, or otherwise hurt any horses, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed, that then every such offender or offenders shall loose and forfeit, unto the party grieved, treble the damage which he or they shall thereby sustain: the same to be recovered by action of trespass, or upon the case. S. 5.

No person who shall be punished for any offence, by virtue of this act, shall be punished for the same offence,

offence, by virtue of any other act or law whatsoever; nor shall be questioned for the same, unless he be proceeded against within six months after the offence committed. S. 7.

Amongst the numerous offences, which, by the act (commonly called the *Waltham* black act, occasioned by the enormities committed in *Epping* forest, near *Waltham*, by persons in disguise, or with their faces blacked) are made capital, is that of killing or wounding cattle: for, it is thereby enacted, that if any person or persons shall unlawfully and maliciously kill, maim or wound any *cattle*, every person so offending, being thereof lawfully convicted, (in *any* county of England) shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy. 9 *Geo. I. c. 22. s. 1.* But not to work corruption of blood, loss of dower, nor forfeiture of lands or goods. S. 14. Prosecutions upon this statute, shall, or may be commenced within three years from the time of the offence committed, but not after. S. 13

In the case of the *king* against *John Paly*, it was unanimously agreed by all the judges, that, as the statute 22 and 23 *Cha. 2 c. 7*, had made the offence of killing horses a single felony, this statute of the 9 *Geo. I.* was only to be considered as an extension of that statute. 2 *Black. rep. 721.*

SECTION

SECTION VII.

PUTTING HORSES ON COMMONS.

Age & size
of stoned
horses.

NO person or persons whatsoever, shall have, or put to pasture into or upon any ground, forest, chase, moor, marsh, heath, common, or waste ground, any stoned horse or horses, being above the age of two years, and not being of the height of fifteen hands, to be measured from the lowest part of the hoof of the forefoot, unto the highest part of the wither, and every hand to contain four inches of the standard, to pasture, feed, or be in or upon any of the said forests, chases, commons, &c. within any of the shires and territories of *Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South Hampshire, North Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, the county of the city of York, the town and liberties of Gloucester, the county of the town of Kingston-upon-Hull, the county palatine of Lancaster, the counties of Salop, Leicester, Hereford and Lincoln*; nor shall put to feed or pasture, any stoned horse or horses, being above the said age of two years, and not being of the height of fourteen hands, to be measured as is above said, within or upon any
like

like ground or grounds as above written, lying or being within any other shire of this realm, nor within any of them, upon pain of forfeiture thereof.

32 Hen. 8. c. 13. s. 2.

Provided that this shall not extend to any ^{Exceptions.} stoned horse or horses, under the heights above mentioned, in or upon any common, or other waste grounds, where any mares or fillies are not used, nor suffered to be fed, pastured, or kept. S. 10. Cornwall it now excepted.

Nor shall it extend to the marshes, and fedy fen grounds within the *Isle of Ely*, in the county of Cambridge; together with all other the marshes, and fedy fen grounds within the shires of *Cambridge, Huntingdon, Northampton, Lincoln, Norfolk and Suffolk*: nevertheless, no person or persons shall have, or put to pasture into or upon any marsh, or fedy fen grounds within the same isle or counties, any stoned horse or horses, being above the age of two years, and not being of the height of thirteen hands, upon pain of forfeiture thereof. 8 Eliz. c. 8. s. 2 and 3.

Nor to any stoned horse or horses, that shall ^{Horses escaping into commons.} happen once, in any year, to break or escape out of any several pasture or ground, into any of the said forests, chases, moors, &c. so that the said horse or horses, so breaking or escaping out, do not remain, or abide there by the space of four days, next after notice given at the dwelling-house of the

the owner, or after open publication thereof, made upon a Sunday, or other festival, in the parish church, where the owner or possessor of such horse dwells. 32 Hen. 8. c. 13. s. 5.

Seizing the
same.

It shall be lawful to every person and persons, that shall find any horse or horses, contrary to the form of this statute, to seize the same, in manner following, *viz.* he or they shall first go to the keeper or keepers of such forest, chase, common, &c. or to his deputy or deputies, or to the constable, bailiff, headborough, burfholder, or tithingman of any township, next adjoining the place where the said horse or horses shall be, and shall command, or require him or them, to go with him or them, to bring every such horse or horses to the next pound, and there to be measured by any of the same officer or officers, in the presence of three other honest men, to be named and appointed by the said officer; and, if it be found that the horse or horses be contrary to the act, that then the person or persons that shall seize the said horse or horses, shall take and retain the same to his own use. 32 Hen. 8. c. 13. s. 3.

And, if any of the said keepers, &c. or any of the said three honest men, which shall be required to be at the measuring of the said horse or horses, do refuse to do as is aforesaid, or do not truly measure such horse or horses, every of them shall forfeit 40s. one half to the king, and the
other

other half to the party, that will sue for the same.

S. 4.

All forests, chases, commons, moors, marshes, ^{Driving} heaths and waste grounds, within this realm of ^{commons.} England and Wales, and the marshes of the same, shall be driven at the feast of St. *Michael* the *Archangel*, or within fifteen days then next after, yearly, by the lords, owners and possessors thereof, or by the officers of the same, and by the constables, headboroughs, bailiffs, bursholders, and tithingmen, within whose limits the same (being out of forests or chases) be, or lie, upon pain of 40s. to be forfeited to the king. And they may also drive the same at any other season and time of the year; and as often as they shall think meet and convenient. S. 6.

And, if in any of the said drifts, there shall be ^{Unprofit-} found any mare, filly, foal, or gelding, that then ^{able} shall be thought not to be able, nor like to grow to be able to bear foals of reasonable stature, or not able, nor like to grow to be able to do profitable labours, by the discretion of the drivers aforesaid, or of the more number of them, then they shall cause the same to be killed, and the bodies to be buried, or otherwise bestowed, as no *noyance* shall come to the people. S. 7.

The justices of peace, in their quarter sessions, ^{Penalties.} and stewards of leets and law days, shall have authority to inquire of all defaults, contempts,

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omissions,

omissions, and offences against the act ; and all presentments shall be certified by the steward, deputy steward, or court holder, in the next general sessions of the peace, or unto the *custos rotularum* of the shire, within forty days next after the presentment made ; which justices, in their sessions, shall have power to hear and determine such presentment ; and if any steward, deputy steward, or court holder conceal any such presentment, or do not certify the same, he shall forfeit for every such offence 40s. ; one half to the king, the other half to the person or persons that will sue for the same, before the justices in sessions. S. 8.

Exception
as to
Cornwall.

By 21 J. 1. c. 28. s. 12. It is enacted, that so much of the statute of 32 Hen. 8. c. 13. as concerneth or inhibiteth the putting of horses into certain grounds, unless they be of statutes in that act mentioned, and that giveth authority to kill mares, fillies, foals or geldings, shall not extend to the county of Cornwall.

SECTION

SECTION VIII.

PUTTING SCABBED HORSES ON COMMONS.

NO person or persons shall have, or put to pasture, any horse, gelding or mare, *infected* with scab or mange, into or upon any forest, chase, moor, marsh, heath, common, waste ground or common field, upon pain to forfeit for every horse, gelding or mare, so infected, pasturing in any of the said grounds, ten shillings; which offence shall be inquirable, and presentable before the steward in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the same leet, where the offences shall be presented. 32
Hen. 8. c. 13. s. 9.

THE LAW

SECTION IX.

HORSES IN HACKNEY COACHES.

NO horse, gelding or mare, to be used with any hackney coach in *London or Westminster*, shall be under the size of fourteen hands high, according to the standard, under the forfeiture of five pounds ; one moiety whereof shall be to the informer, and the other moiety to the use of his majesty. 9 *Ann. c. 23. s. 4.*

SECTION

SECTION X.

OF WAVED AND STRAY HORSES.

WAIFS, *bona waviata*, are goods stolen, *Wais*, and waved, or thrown away by the thief in his flight, for fear of being apprehended. 1 *Black. com.* 297.

These are given to the king by the law, as a punishment upon the owner, for not himself pursuing the felon, and taking away his goods from him. *Ibid.*

And, therefore, if the party robbed, do his diligence immediately to follow and apprehend the thief, (which is called making fresh *suit*) or do convict him afterwards, or procure evidence to convict him, he shall have his goods again. *Ibid.*

Waved goods do also not belong to the king, till seized by some body for his use; for, if the party robbed can seize them first, though at the distance of twenty years, the king shall never have them. *Ibid.*

If the goods are hid by the thief, or left any where by him, so that he had them not about him, when he fled and therefore did not throw them away in his flight, they are not *bona waviata*; but the owner may have them again when he pleases. *Ibid.*

Waifs are not like *estrays*; which, though the lord may seize, yet the party who is the owner may retake them within the year and day: but these the true owner cannot seize, though upon fresh suit within the year and day. 1 *Burn's just.* 577.

Estrays.

Estrays are such valuable animals, as are found wandering in any manor or lordship, and no man knoweth the owner of them; in which case, the law gives them to the king, as the general owner and lord paramount of the soil, in recompence for the damage which they may have done therein: and they now most commonly belong to the lord of the manor, by special grant from the crown. 1 *Black. com.* 297.

Waifs and estrays to be proclaimed.

But, in order to vest an absolute property in waifs and estrays in the king, or his grantees, they must be proclaimed in the church, or at the church door, on a *Sunday*, as the people come out of the church; and at the two market towns next adjoining to the place where they are found; and then, if no man claim them, after proclamation, and a year and a day passed, they belong to the king, or his substitute, without redemption; even though the owner were a minor, or under any other legal incapacity. 1 *Black. com.* 298. 1 *Burn's just.* 576.

Year and day.

The king or lord has no property, till the year and day passed; for if a lord keepeth an estray three quarters of a year, and within the year it strayeth again, and another lord getteth it, the first lord cannot

cannot take it again. 1 *Black. com.* 298. But it may be chased back, unless it be seized by another lord. 1 *Burn's just.* 578.

The year and day commence from the time of the proclamation, and not from the time of the seizure; for, after the first proclamation it becomes an estray, but not sooner. 1 *Burn's just.* 578.

If the owner claim it within the year and day, ^{Owner claiming.} he must pay the charges of finding, keeping and proclaiming. 1 *Black. com.* 298.

But the owner of an estray (if it be within the year and day) may take it without telling any marks, or making any proof of property; but this may be done upon the trial if contested. 1 *Burn's just.* 577. 2 *Salk.* 686.

And the lord ought to make a demand of what the amends should be; and then, if the party think the demand unreasonable, he may tender sufficient amends, and if the lord shall not accept it, this shall be settled by the jury upon the trial. *Ibid. ibid.*

But it is sufficient, in this case, to tender amends generally, without expressing any certain sum. For there is a difference between this case, and that of a tender of amends for trespass. In that of a trespass, if the defendant plead a tender of amends, he must shew what he tendered; for he must tender a certain sum, and the law puts this difficulty upon him, because he is the wrongdoer. But the owner of the estray is no wrongdoer,
and

and it is impossible he should know how long his beast hath been in the lord's custody, and how much will make a proper satisfaction. *Ibid. ibid.*

How to be
used.

Waifs and estrays ought to be wreathed, and to be put in some several ground in an open place, and not in any covert of wood, that the owner may have a view of them; for, if they be in covert, the property is not changed, though they be there a year and a day. 1 *Burn's just.* 577.

It is not lawful to use an estray in any manner, unless in case of necessity, and for the benefit of the owner, as to milk cows; but to use a stray horse by riding or drawing, is tortious, although it were alledged, that the common course is to use stray horses, with *withes* about their necks. *Cro. Ja.* 148.

SECTION

SECTION XI.

DUTY ON SADDLE AND CARRIAGE HORSES.

EVERY person who shall keep and use any ^{Acts im-} horse, mare or gelding, for the purpose of ^{posing} riding, or for the purpose of drawing any coach, berlin, landau, chariot, calash, chaise, or any other carriage, by whatsoever name such carriage is now, or hereafter may be called or known (for, or in respect whereof any rate or duty, under the management of the commissioners of the excise, now is, or are made payable, by any statute now in force) shall pay, annually, for every such horse, mare or gelding, the sum of ten shillings. 24 Geo. 3. *sess.* 2. c. 31. s. 1.

Every person who shall keep and use *two* horses, mares or geldings, and no more, for the purpose of riding, or for the purpose of drawing any coach, berlin, landau, chariot, calash, chaise, or any other carriage, for, or in respect whereof any rate or duty, heretofore under the management of the commissioners of excise, and now transferred to, and under the management of the commissioners for the affairs of taxes, is payable, by whatsoever name such carriage now is, or hereafter may be called or known, shall be charged with an additional annual duty of five shillings for *one* of such horses, mares or geldings. 29 Geo. 3. c. 49. s. 1

Every

Every person who shall keep and use *three*, *four* or *five* horses, mares or geldings, and no more, for the purpose of riding, or drawing any such carriage as aforesaid, shall be charged with an additional annual duty of seven shillings and sixpence, for each such horse, mare or gelding, exceeding the number of one. *Ibid.*

Every person who shall keep and use *six*, or *more* horses, mares or geldings, for the purpose of riding, or for the purpose of drawing any such carriage as aforesaid, shall be charged with an additional annual duty of ten shillings for *each* such horse, mare or gelding, exceeding the number of one. *Ibid.*

By the 31 *Geo. 3. c. 5.* an additional rate or duty of ten pounds *per cent.* upon the gross amount of certain rates and duties, under the management of the commissioners for the affairs of taxes, is imposed, which includes the duty upon saddle and carriage horses. *Vid. sect. 4.*

The entire
duty col-
lected.

The entire duty on saddle and carriage horses, is as under:

If only *one* is used, 11s.

If only *two* are used, 11s. for one of them, and 16s. 6d. for the other.

If *three*, *four* or *five* and no more are used, 11s. for one of them, and 19s 3d. for each of the others.

If *six* or more are used, 11s for one of them and 1l. 2s. for each of the others.

And,

And, whereas doubts have arisen on whom the duties should be chargeable, in respect of horses let out by the year, month or other period, *for the purpose of drawing any carriage* therein enumerated, it is enacted, that the said duties shall be paid by the person, by whom such horses shall be hired and used. 29 Geo. 3. c. 49. s. 3.

The duty does not extend to any horse belonging to any non-commissioned officer, or private soldier, of any of the regiments of cavalry, in his majesty's service; nor to any horse, mare or gelding belonging to, and *kept for sale*, and not for hire, in the stables of any licensed dealer in horses; nor to any horse, mare or gelding, let to hire for travelling post by the mile, or from stage to stage, or let to hire for a day or less period of time, by any post-master, inn keeper or other person, licenced for that purpose by the commissioners of the stamp duties. 24 Geo. 3. Sess. 2. c. 31. s. 15. and 29 Geo. 3. c. 49. s. 2.

No person who shall keep any horse, mare or gelding, which shall be used truly and without fraud for the purpose of husbandry, or of drawing any carriage (except such as was heretofore liable to any excise duty) or carrying burdens, in the course of the trade, or occupation of the person or persons to whom such horse, mare or gelding shall belong, shall, in respect thereof, be chargeable with the duty, in case such horse, mare or gelding shall

not

not be used for any other purpose of riding, except in manner hereinafter mentioned, that is to say, when returning from any place to which any load or burthen shall have, by such horse, mare or gelding, been drawn or carried, or in going to any place from whence any load or burthen shall be to be brought back, by any such horse, mare or gelding, or on account of such horse, mare or gelding having been used for the purpose of riding, to procure medical assistance, or for the purpose of riding to or from market, or to or from any place of public worship, or to or from any election of members to serve in parliament, or to or from any court of justice, or to or from any meeting of the commissioners of taxes. 26 Geo. 3. c. 79. s. 1.

Further exemption.

No duty shall be imposed, or levied for, or in respect of any horse, whereof the owner, by reason of poverty, shall be exempted from the actual payment of the usual taxes and contributions, towards the church and poor. S. 2.

Further exemption.

No person occupying a farm, the rent or value of which shall be less than seventy pounds a year, and making a livelihood solely thereby, shall be chargeable with the duty on account of any horse, mare or gelding, being occasionally used in riding; provided such horse, mare or gelding be *bonâ fide* kept, and usually employed for the purposes of husbandry. S. 4.

DRAWING

DRAWING ANY CARRIAGE. Mr. *March* and Mr. *Taylor*, both of *Henley-upon-Thames*, inn-holders, appealed against an assessment, which charged *March* 2*l.* for eight horses, and *Taylor* 2*l.* 10*s.* for ten horses, for half a year, kept by them for the purpose of riding. On hearing the appeal, the commissioners confirmed the assessment, although the said horses were kept by them for drawing stage coaches, from stage to stage only; but the judges were of opinion, that the determination of the commissioners was wrong. 18*th* July, 1786
2 Burn's just. 629.

But an innkeeper who uses a horse as a saddle horse occasionally, and for which he takes out, and pays a licence, as a post horse, under the post horse act, is not exempted from paying the saddle horse tax. 13*th* December, 1785. *Ibid.*

RIDING TO OR FROM CHURCH OR MARKET. *T. Overend*, butcher; *D. Tyas*, cordwainer, *J. Gaunt* and *J. Hurst*, worsted-manufacturers; and *J. Houghland*, farmer, as well as owner of some small estates, all in *Staincross* Wapentake, in the west-riding of *York*, were each charged with the duty for one riding horse, from which they appealed; alledging, that they never ride any horse kept by them but to church and market, and each of them took the following oath.
 " I. A. B. do swear, that I, or any other
 " person, with my knowledge, never rode any
 F " horse,

“ horse, mare or gelding kept by me, from the
 “ 10th of October, 1784, to the 10th of October,
 “ 1785, except to or from market to church, or
 “ other place of public worship, or to or from
 “ plough or pasture.” Whereupon the com-
 missioners discharged the said several persons from
 the duty ; with which the surveyor was dissatisfied,
 alledging, that the said *Overend* rode his horse to
 several neighbouring towns and villages, to purchase
 calves and other cattle, when no market was kept ;
 and *Tyas* to the tanners, to buy leather, and to
 towns and villages to sell his shoes when made ;
 and *Gaunt* and *Hurst* to several parts of the
 kingdom, where no public market is kept, to
 purchase wool, and after to the walk-mill with
 their pieces, and other places with their worsted to
 weave, &c. ; and *Houghland* to the mill with corn
 to grind for his family’s use, or to the smith’s shop
 with his horses to shoe ; which the surveyor
 apprehends is giving *too extensive a scope to the*
word market, and cannot be construed within the
 meaning of the act, which says “ and to no other
 “ place, or for no other purpose of riding.” The
 judges were of opinion, that the determination of
 the commissioners was wrong as to all, except
Houghland. 18th July, 1786. 2 *Burn’s*
just. 630.

PURPOSES OF HUSBANDRY. *John Osmond*,
 of *Biecester*, in *Oxfordshire*, appealed against a
 surcharge

surcharge of one horse ; he is a farmer and butcher, and keeps four horses, two for riding, and the others for packing and drawing, and thinks himself liable for two horses only, the others being used in his farming business, and for packing his meat on. The commissioners allowed the appeal, but the surveyor thought the appellant liable to be charged with three horses, as they are occasionally all rode, and not any two kept for the purpose of packing and drawing alone. The judges were of opinion that the determination of the commissioners was wrong. 18th July, 1786. 2 Burn's just. 631.

The 25 Geo. 3. c. 47. (commonly called the Transfer act) transfers the receipt and management of the duty on saddle and carriage horses, together with other duties, from the commissioners of stamps, to the commissioners for the affairs of taxes.

By this act, certain persons to be appointed assessors, shall, within fourteen days after their appointment, yearly give, or leave notice in writing, to or for every person liable to pay the duty on horses, at his or her dwelling-house, to prepare and produce, within the space of fourteen days next ensuing the day of giving such notice, a list in writing of the number of horses liable to the duty on horses, kept and used by him and her ; which list shall contain the greatest number by him or her kept and used, in the

On notice
lists in
writing to
be deliver-
ed of horses
kept liable
to duty.

course of the year, ending on the preceding fifth day of April, and sign the same with his or her own hand, and deliver, or cause the same to be delivered, to the assessor or assessors, at any time after the expiration of fourteen days from the notice being given, when he or they shall call for the same. And if any person shall neglect or refuse to make out, sign and deliver such list, then the assessor or assessors, shall, from the best information he or they can obtain, make an assessment upon such person so refusing or neglecting; and every such assessment so made, upon any such neglect or refusal, shall be final and conclusive upon such person who shall not be at liberty to appeal therefrom; unless such person shall prove that he or she was not at his or her dwelling-house, at the time of the delivery of such notice, nor between that day and the time limited for delivering such lists as aforesaid to the assessor, or unless such person shall alledge and prove such other excuse for not having delivered a list, as the commissioners for executing the act shall think sufficient. S. 20.

Person assessed in two parishes.

If any person having been assessed in one parish or district for his horses, shall be again assessed in another parish or district, for the same horses, the commissioners shall alter any assessment of such person, so assessed twice, on proof that such person hath paid the duties in another place. S. 22.

The

The assessors shall not be bound by such lists as shall be delivered to them, but shall be at liberty, if they shall find upon due examination, that any horse or horses is or are omitted in such lists, to surcharge the same, and make a true assessment of the real number of horses kept by each such person, and in all cases where any assessor, surveyor or inspector shall make a surcharge upon any person, in respect of any horse omitted, such surcharge shall be made after the rate of double the duty, for every horse so omitted; and the assessor, surveyor or inspector, shall have for his own use, one moiety of the sum charged by every surcharge which shall be justly made. S. 24. 28.†

Where any person shall refuse or neglect, within the time before prescribed, to deliver, or cause to be delivered, any list or declaration, to the assessor or assessors, he or she shall, for every offence, forfeit ten pounds. S. 27.

The inhabitant house-holder of any house, in which there shall be any lodger or inmate keeping any horse liable to the duties, shall, within a week after a notice in writing from the assessor, deliver a list in writing, expressing the christian and sur-

† The only way in which the revenue is likely to be defrauded of this branch of it, is by the delivery of lists of fewer horses than are used. The penalty of double the duty for every horse discovered to be omitted, seems inadequate.

name of every such lodger or inmate, and containing an account of every horse which he shall keep, liable to the said duty, to the best of the knowledge and information of such inhabitant householder, or for every offence forfeit ten pounds.

S. 29.

Appeal.

If any person shall think himself overcharged by any assessment, charge or surcharge, he may appeal to the commissioners for putting the act in execution, and they, or any two of them, shall determine all appeals; except where it shall appear, that the person appealing shall have omitted to deliver in a list, and shall not assign sufficient cause for such omission, in which case the commissioners shall dismiss the appeal; provided that, at the time of hearing the appeal, a list shall be produced by the appellant, on oath, of the greatest number of horses, within the district or limit of the places where such appeal shall be made, subject to the duties, which shall have been kept by him or her at any time, within the year, preceding the fifth day of April, in every such year. S. 30.

Every person intending to appeal, to give at least ten days notice of his intention to appeal, to the surveyor or an assessor. S. 31.

Penalties.

The penalties not exceeding twenty pounds, (for there are penalties on the assessors, &c. and the act relates to other matters besides horses) shall be recoverable before two justices of the peace,

peace, on proof of the offence, either by confession of the party, or the oath of one witness; one moiety to the king and the other moiety to the informer. *S.* 39.

All actions, suits or informations to be brought within one year after the offence committed. *Limita- tion.*

S. 41.

The plaintiff being convicted by the defendant, a justice, on the 24 *Geo.* 3. *c.* 31. for keeping a horse without paying the duty, it was holden, that an appeal against the conviction must be to the quarter sessions, next after the conviction, and not after an execution against the goods, for the penalty and costs of suits, notwithstanding the plaintiff was not aggrieved till the execution. *1 term rep. B. R.* 414. *Determin- ation re- specting the time of appeal.*

But note, the 25 *Geo.* III. *c.* 47, does not give an appeal, as to the penalties recoverable before two justices.

SECTION

SECTION XII.

RACE-HORSES AND THE DUTY THEREON.

Preamble.
to 13 Geo.
2. c. 19.

WHEREAS the great number of horse races for small plates, prizes, or sums of money, have contributed very much to the encouragement of idleness, to the impoverishment of many of the meaner sort of the subjects of this kingdom, and the breed of strong and useful horses hath been much prejudiced thereby, it is enacted, that no person or persons shall enter, start or run any horse, mare or gelding, for any plate, prize, sum of money or other thing, unless such horse, mare or gelding shall be truly, and *bonâ fide*, the property of such person so entering, starting or running the same: on penalty of forfeiting the said horse, mare or gelding, or the value thereof. 13 Geo. 2. c. 19. s. 1.

Horses to
be the pro-
perty of
the persons
entering

No person
to enter
more than
one horse.

No prize
to be for
less than
50l.

And in case any person or persons shall enter and start more than one horse, mare or gelding, for one and the same prize, every such horse, mare or gelding (other than the one first entered,) or the value thereof, shall be forfeited. S. 1.

No plate, prize, sum of money or other thing, shall be run for by any horse, mare or gelding, or advertised, published or proclaimed to be run for, unless such plate, prize, or sum of money be of the full, real and intrinsic value of fifty pounds, or upwards :

upwards : and in case any person or persons shall enter, start or run any horse, mare or gelding, for any plate, prize, sum of money or other thing, of less value than fifty pounds, or shall make, print, advertise, or publish any advertisement or notice of any plate, prize, sum of money or other thing, of less value than fifty pounds, to be run for, every such person or persons, so entering, starting or running such horse, shall forfeit 200*l.* and every person or persons who shall make, print, publish, advertise or proclaim any such advertisement or notice, shall forfeit 100*l.* S. 2.

Provided, that every race that shall be run for any plate, prize or sum of money, shall be begun and ended in the same day. S. 4.

No person or persons shall start or run any match, between any horse, mare or gelding, for any sum of money, plate, prize or other thing, unless such match shall be started or run at *Newmarket* or *beath*, or *Black Hambleton* ; or the said sum of money, plate, prize or other thing, be of the real and intrinsic value of fifty pounds or upwards, on forfeiture of 200*l.* S. 5.

All penalties and forfeitures shall be sued for, and recovered by any action, bill, plaint or information in any of the courts of Westminster, or at the assizes ; and one moiety thereof shall be to the use of such person or persons as shall sue for the same, and the other moiety to the use of the poor of the parish

parish or place where the offence shall be committed ; except in the county of *Somerset*, where one moiety shall be applied for the benefit of the poor persons admitted into the hospital or infirmary, at *Bath*. S. 6.

Entrance money to the second horse. All and every sum or sums of money, to be paid for entering any horse, mare or gelding to run, shall go, and be paid to the second best horse, mare or gelding, which shall start or run. S. 7.

Exception. Nothing in the act contained, shall extend to prevent the starting or running any horse, mare or gelding for any plate, prize, or other thing or things which, at the time of the passing thereof, was issuing out of, or paid for or by the rents, issues and profits of any lands, tenements or hereditaments, or of or by the interest of any sum or sums of money, then chargeable with the same, or appropriated for that purpose. S. 8.

Duty. The owner of every horse, mare or gelding, entered to start or run for any plate, prize, sum of money or other thing, shall, previous to the entering or starting such horse, mare or gelding, pay the sum of 2l. 2s. as the duty for one year ; to be paid, for the use of his majesty, into the hands of the clerk of the course, book-keeper, or other person authorized to make the entry of such horse, mare or gelding, being to start or run ; and if such owner shall, previous to the starting, neglect or refuse to pay the same, he shall forfeit twenty pounds ;

pounds; one moiety to the king, and the other moiety, with full costs of suit, to the informer.

24 *Geo. 3, sess. 2. c. 31. s. 5 and 18.* †

Every clerk of the course, book-keeper or other Clerk of the course, person, shall, within fourteen days after the receipt thereof, give an account of all monies received his duty by him, for horses so entered to start as aforesaid, and allowance. to the distributor of stamps in the county where the race was run, upon demand made by such distributor for the same, and produce his appointment. And, in case of not accounting for, and paying the same, he shall, for every default in not delivering his accounts, pay 100*l.* and for every default of payment, forfeit double the amount of the money due at the time of such default. And the head distributor of stamps shall make him an allowance of 1*s.* in the pound for all monies accounted for and paid by him. 24 *Geo. 3. sess. 2. c. 31. s. 6 and 7.*

† The 25 *Geo. 3. c. 47.* does not transfer the management of this duty to the commissioners for the affairs of taxes; consequently the 31 *Geo. 3. c. 5.* which imposes a duty of ten per cent upon the gross amount of the rates and duties under their management, does not, though it mentions horses generally, increase the duty on race-horses.

SECTION

SECTION XIII.

DUTY ON HORSE-DEALERS.

Licence in
London.

EVERY person exercising the trade and business of a horse-dealer, within the cities of *London* and *Westminster*, the weekly bills of mortality, or within the borough of *Southwark*, and who shall take out a licence to use and exercise the said trade and business of a horse-dealer, shall pay, annually, the sum of ten pounds. 24 *Geo. 3. sess. 2. c. 31. s. 1.*

In the
country.

And every person exercising the said trade or business of a horse-dealer, *without* the cities of *London* and *Westminster*, the weekly bills of mortality, or the borough of *Southwark*, and who shall take out a licence to use and exercise the said trade and business of a horse-dealer, shall yield and pay, annually, the sum of five pounds. *Ibid.*

By whom
granted.

Two or more commissioners of the stamp duties, or a person authorised by them, empowered to grant licences. S. 3.

When to
be renewed.

And every person who shall take out such licence, shall take out a fresh licence for another year, ten days, at least, before the expiration of that year, for which he shall have been so licenced, if he shall continue to use and exercise the said trade and business of a horse-dealer, and shall
in

in like manner, renew such license from year to year, as long as he shall continue to exercise the said business. S. 3.

Every person exercising the trade and business of a horse dealer, and who shall have taken out a license for that purpose, shall cause the words "LICENSED TO DEAL IN HORSES," to be painted or written in large and legible characters, either on a sign hung out, or on some visible place in the front of his or their house, gateway or stables, at the respective places at which he or they keep such horses for sale; and if any person so licensed as afore said, shall presume to sell any horse without fixing or hanging out such token, he shall for every such offence, forfeit five pounds; one moiety to the king, and the other moiety, with full costs of suit, to the person who shall inform and sue for the same. S. 4 and 18.

After reciting that the commissioners of the stamp duties, are not prohibited by the 24 Geo. 3. c. 31. from granting licenses to any person applying for the same, although such person may not actually exercise the trade and business of a horse-dealer, within the intent and meaning of the said act, it is enacted, that it shall not be lawful for the said commissioners, or for any person authorized by them, to grant any license to any person whatsoever, to use and exercise the trade and business of a horse-dealer, unless such person shall produce to

The words
"licensed
&c." to
be put up.
Penalty on
omission.

Declarati-
on to be
made on
taking out
a license.

the said commissioners, or the person authorized by them, a declaration in writing, signed by him, that he doth seek his living by buying and selling of horses, and shall in the said declaration, set forth the particular place and places where such trade and business is to be exercised and carried on; and every license granted to any person, other than to such as shall seek his living by buying and selling horses, shall be wholly void and of no effect. 29

Geo. 3. c. 49. s. 5.

Assessors
may charge
horse-dea-
lers for
their saddle
and car-
riage
horses.

If the assessors shall find that any person, to whom a license to exercise the trade and business of a horse-dealer hath been granted, doth keep and use any horse or horses for the purpose of riding, or for the purpose of drawing any such carriage as aforesaid, and not for sale, and such person shall, upon due notice having been given, neglect or refuse to make out, sign and deliver a true list in writing, of the number of such horses so kept and used by him, liable to the several duties on horses, or shall omit any such horse or horses in such list, then the assessors shall be at liberty, from the best information they can obtain, to make a true assessment upon such person so licensed, and to charge him for the real number of horses, which shall be kept and used by him, for the purpose of riding, or for the purpose of drawing any such carriage as aforesaid, notwithstanding such license to him so granted.

S. 6. †

† The

† The 24 Geo. 3. *sess.* 2. c. 31. s. 3. says, that all and every person and persons, who shall take out a license for using and exercising the trade and business of a horse-dealer, shall, *in order to be exempted from the duty thereby imposed on any horse, mare or gelding kept and used by him*, take out a fresh license for another year, ten days, at least, before the expiration of that year for which he shall have been so licensed, if he shall continue to use and exercise the said trade and business. And the 15th S. of the same act exempts horses *kept for sale, and not for hire*, in the stables of any dealer in horses, licensed pursuant to that act, from the duty thereby imposed on saddle and carriage horses. If the third section was meant to exempt the saddle and carriage horses of licensed dealers from the duty on such horses, why should a subsequent section, in the same act, expressly exempt horses *kept for sale and not for hire*? It is with diffidence conceived, that the saddle and carriage horses of licensed dealers were, by this act, intended to be liable to the duty imposed on such horses: yet the act appears to be so incorrectly penned, that probably lawyers of the greatest eminence, may entertain considerable doubts whether they were meant to be exempted, or not. However by the 29 Geo. 3. c. 49. s. 6. they are now clearly made liable to the duty. In the 17th and last edition of *Burn's justice* printed in 1793, it is said, that by the 24 Geo. 3. c. 31. *sess.* 2. every person exercising the trade or business of a horse-dealer may, *in order to be exempted from the duty on horses*, take out a license from the stamp officers. Now, however it may have been before the passing of the 29 Geo. 3. c. 49. the saddle and carriage horses of dealers are not exempted from the duty, since the passing of that act.

The learned author seems to have been misled by the words of the 24 Geo. 3. and to have overlooked, or forgotten, the sixth section of the act of the 29 Geo. 3. c. 49. This observation is made to correct, as far as may be, any erroneous opinions which may have been formed, in consequence of the inaccuracy in the valuable book just referred to. The merit of *Burn's justice*, is too deservedly and universally established, to be shaken by this remark. Its arrangement is admirable, and it is upon the whole very accurate, and proves the author to have possessed an uncommonly clear understanding, and great industry. To produce a work of that nature and magnitude, perfectly correct, is, perhaps, beyond the attainment of any human being.

The 24 Geo. 3. *sess.* 2. c. 31. s. 1. only says, that those who take out a license, to use and exercise the business of a horse-dealer, shall pay annually, the sums therein specified; and the act does not inflict any penalty on horse-dealers, for not taking out licenses, nor declare that they shall take them out. As it is natural to suppose that the tax imposed on horse-dealers, by means of their taking out licenses, was for the purpose of raising a revenue, it seems somewhat extraordinary, that the act is not compulsory on them to take out licenses, and still more so, that an obstacle should be thrown in the way of any person's taking out a license who applies for one, by requiring him to make a declaration, that he seeks his living by buying and selling horses. The reason why such a declaration is required, is not very obvious; except we imagine, that the legislature supposed that taking out a license would exempt the saddle and carriage horses, of the persons licensed, from the duty imposed on such horses; but
this

this may seem a bold supposition, for the same act which requires the declaration, expressly makes the saddle and carriage horses of licensed dealers, liable to the duty imposed on such horses. Why should not a gentleman, who deals in horses *for amusement*, pay for a license, especially when he makes application for one, and as he would not by law acquire any privilege or immunity thereby?

SECTION XIV.

POST HORSES.

Duty on
persons
letting
horses.

EVERY post-master, inn-keeper or other person, who shall let to hire any horse, for the purpose of travelling post, by the mile, or from stage to stage; or being a person usually letting horses to hire, shall let to hire for a day, or any less period of time, any horse for drawing any coach or other carriage used in travelling post, or otherwise, in respect whereof any duties are payable, shall pay, annually, the sum of five shillings for a license. 25 Geo. 3. c. 51. s. 4.

On horses
hired by
the mile
or stage.

For every horse hired by the mile or stage, to be used in travelling post, there shall be charged a duty of $1\frac{1}{2}$ d a mile. S. 4.

On car-
riage horses
hired for a
day or less
period.

For every horse hired for a day, or any less period of time, for drawing on any public road, any coach or other carriage used in travelling post or otherwise, in respect whereof any duties are payable, there shall be charged, if the distance shall be then ascertained, $1\frac{1}{2}$ per mile; and if the distance shall not then be ascertained, there shall be charged 1s. 9d. for each horse so hired, to be paid by the person by whom such horse shall be hired. S. 4.

By whom,
to whom,
and at what

Two or more of the commissioners of the stamp duties, or some person duly authorized by them, shall

shall grant licenses to such persons who shall apply for the same, to let out horses for hire for the space of one year; and every person, who shall take out such licenses, shall take out a fresh license for another year, ten days, at least, before the expiration of that year, for which he shall be so licensed, and shall renew such license annually, so long as he shall continue to let out horses for hire. S. 7.

The penalty of letting horses to travel post without a license, is 10l. for every offence. S. 6.

No person shall, by virtue of one license, keep more than one inn, house or other place for letting horses; but for each place, a separate license shall be taken out, upon pain to forfeit, for every place kept by him not licensed, 20l. S. 8.

Every person so licensed, shall cause the words "LICENSED TO LET POST HORSES," to be painted or written in legible characters, either on a sign hung out, or in some visible place in the front of his house, stables or out-offices, at the respective places at which he lets horses, on penalty of five pounds for every offence. S. 9.

Every person, licensed to let horses, shall, previous to the using any horse or horses, receive for the use of his majesty, of the person hiring the same, 1½d. for each mile such horse shall be hired to travel, after the number of miles which he shall charge such traveller for the stage or distance; and shall,

time li-
censes to
be granted.

Letting
without a
license.

A license
for every
house.

The words
"licensed,
&c." to
be put up.

Duty on
horses let
by the mile
by whom,
and when,
to be re-
ceived.

Tickets to shall, at the same time, deliver to the person or be delivered persons hiring such horse or horses, one or more stamp office tickets, as occasion shall require, and to which he shall add, if an inn-keeper, the name of his sign or house ; if not an inn-keeper, his name and the name of the town or place where he resides, and the name of the town or place to which such horses may be hired to go ; and if to London, the street, square or place, and the month and day of the month and number of miles. S. 15.

Penalty on not receiving duty and delivering tickets. And if any person, under pretence of there not being a turnpike upon the road, or under any other pretence, shall neglect to receive the said duty of $1\frac{1}{2}$ d. per mile, or shall neglect or refuse to deliver such ticket or tickets as aforesaid, he shall, for every offence, forfeit ten pounds ; and in case of not receiving the duty, shall be chargeable therewith, as if he had actually received the same. S. 15.

To whom travellers are to deliver tickets and penalty on neglect. Every traveller to whom tickets shall be delivered, shall, at the first turnpike or bridge where toll is by law collected, deliver the same to the gate-keeper, which he is directed to demand and to receive and file ; and if any traveller shall have neglected to take a ticket or tickets, or shall not deliver the same, he shall, before he be permitted to pass, pay 1s. 9d. for every horse. S. 16.

Penalty on giving false tickets. No traveller shall be compelled to pay for a greater number of miles than shall be expressed upon the ticket, and if any person licensed, shall insert

insert in such ticket the name of any other town or place, than the one to which the horses shall be hired to go, or shall fill up a less number of miles than the number charged to such traveller, he shall forfeit ten pounds, and the commissioners may refuse to grant a license in future. S. 17.

Where any ticket shall be issued with the number of miles expressed thereon, and the person issuing the same shall charge the traveller a specific sum by the stage and not *per* mile, he shall be accountable for one fourth part of the money received by him, and shall, in that case, express on the ticket the money charged to such traveller, and enter in his weekly account one fourth part of the money so received, and pay the same to the collector, on forfeiture of 10*l.* for every offence. S. 18.

Every person who shall let to hire any horse, by the day or less period of time, shall receive, for the use of his majesty, of the persons hiring the same 1½*d* for each mile such horse shall be hired to go, where the distance shall be ascertained, and where not ascertained 1*s.* 9*d.* for each horse, and shall, at the same time, deliver one or more stamp office tickets, with the words *for a day* inserted therein, and to which he shall add, if an inn-keeper, the name of his sign or house, if not an inn-keeper, his name, and the name of the city, town or place where he resides, and the month and

Charging the traveller a specific sum by the stage.

Duty on horses let by the day or less period, by whom to be received and tickets to be delivered.

Penalty on neglect.

and day of the month; and if he shall neglect to receive the duty, or shall neglect or refuse to deliver a ticket or tickets, he shall, for every offence, forfeit 10l. and in case of not receiving the duty, shall be chargeable therewith. S. 19.

To whom travellers are to deliver day tickets.

Every person to whom such day ticket shall be delivered, shall, at the first turnpike or bridge, where toll is collected by virtue of any act of parliament, through which he shall pass, deliver the same to the tollgatherer, and in return, shall receive a ticket called an *exchange ticket*, to be supplied from the stamp office, which exchange ticket shall be shewn at every turnpike through

Penalty on neglect.

which he shall pass, that day, on penalty, for every offence, of 1s. 9d. for each horse, before he shall be permitted to pass, to be received by the tollgatherer for his own use. S. 20.

Tickets how to be filled up in a certain case.

Where any person shall let to hire any horse or horses, to return in a less period of time than two days, and the number of miles instead of the words, "*for a day*," shall be inserted in such ticket, every such person shall fill up the name of the place to which the horses are hired to go and the true number of miles, ascertaining the distance both going and returning, or forfeit 10l. and be chargeable with the duty. S. 23.

Certificates when horses are let for two

Every person when he shall let to hire for two days or longer, any horses for drawing any carriage, on any public road, shall deliver to the traveller

traveller or driver a certificate supplied from the days or stamp office on which shall be engraved or printed ^{more.}

"*hired for two or more days,*" and to which such person shall add the day of the month, his place of abode, the number of days for which the horses shall be hired, and the name and place of abode of the person hiring the same, which certificate is to be delivered to the gate keeper at the first turnpike or place where toll is by law collected, in return for which the gate keeper shall deliver (gratis) a *check ticket* to be supplied from the stamp-office. If travellers neglect to take such certificates or to leave them, or shall refuse to shew the check ticket at the bars through which they pass, they shall pay 1s. 9d. for each horse, before they be permitted to pass, which the gate keeper may retain to his own use. S. 24.

Any person delivering false certificates, shall for every offence forfeit 20l. and the commissioners may refuse him a license in future. S. 24. Penalty on delivering false certificates.

Every horse, hired to draw any carriage, for less than two successive complete days, shall be deemed, to be hired for one day. S. 25. Less than two days to be deemed one.

And in order to prevent the evading the duties by permitting carriages to be drawn by horses, which have paid the duty, for the stage, under pretence of their being upon their return home, every person who shall take the hire for any horse The person taking the hire chargeable with the duty.

or

or horses, shall be chargeable with the duty.

S. 31.

When
horses not
to be let
otherwise
than by
the mile or
stage.

No person, at whose house any traveller shall change horses, shall let them in any other manner, than by the mile or stage, on penalty of 10l.

S. 32.

When
horses can-
not be fur-
nished.

Where inn-keepers cannot furnish horses for travellers, when applied to, they shall issue a fresh ticket, properly filled up and receive the duty.

S. 33.

Penalties
on gate-
keepers
neglecting
their sever-
al duties.

Gate keepers who shall have received day tickets, refusing to give exchange tickets *gratis*, or delivering exchange or check tickets, not having received day tickets, or making or permitting any alteration in tickets delivered to them to be filed, or delivering the same to persons not authorized to receive them, shall for every offence forfeit 40s : or neglecting or refusing to receive tickets directed to be delivered to them, or neglecting to file the same, shall forfeit five pounds, or neglecting to receive less money than they are authorized to take to their own use, shall forfeit 20s. S. 26. 37. 38.

Their al-
lowance.

Gate keepers to be allowed 3d. in the pound, for all tickets they shall deliver to the collectors.

S. 34.

Horses in
hackney
coaches
excepted.

This act shall not extend to horses used in hackney coaches, within ten miles of *London* or *Westminster*, and the suburbs thereof. S. 41.

Every

Every horse hired by the mile or stage, shall ^{Hiring by} be deemed to be hired to travel post, although ^{the mile} the person hiring the same, do not travel several ^{or stage.} stages or change horses, and although there be not any post house, or post, established on the road. S. 42.

If any person licensed to let horses shall die, ^{Licensed} his executors, administrators or successor may let ^{persons} horses until they shall procure a license; provided, ^{dying.} that the license be taken out within thirty days after the death of such person so dying. S. 43.

Licensed persons to be allowed 3d. in the Allowance pound, out of all monies to be accounted for, and paid by them to the receiver or collector. S. 54.

If any person shall forge or counterfeit, or ^{Forging} cause or procure to be forged or counterfeited, ^{tickets or} or aid or assist in forging or counterfeiting any ^{certificates} ticket, note or certificate, or shall utter or publish as true, any false, forged or counterfeited ticket, note or certificate, he shall forfeit 50l. S. 55.

All penalties (if a prosecution shall be com- ^{Applica-} menced within six calendar months) shall be ^{tion of} divided; one moiety to his majesty, the other ^{penalties.} moiety, with full costs of suit, to the prosecutor. Penalties not sued for within six months, shall belong to his majesty. S. 56. 58.

Penalties amounting to fifty pounds, shall be ^{Penalties} ^{above 50l.} H sued

fued for in one of the courts at *Westminster*.
S. 57.

Penalties
under 50l.

Where the offence subjects the offender to a penalty not amounting to fifty pounds, a justice of the peace may determine the same, and give judgment for the penalty or forfeiture, according to the act; and if any person shall find himself aggrieved by such judgment, he may (upon giving security to the amount of the value of the penalty and the costs, awarded in such judgment) appeal to the next quarter sessions. If the next sessions fall within six days after the conviction, then to the subsequent sessions. S. 59.

Mitiga-
tion.

A justice may, where he shall see cause, mitigate the penalties, so as such mitigation do not reduce the same to less than a moiety of the penalties incurred above the costs and charges. S. 63.

Note, this act, which is very long, relates also post carriages.

What shall
be deemed
travelling
post.

The letting of a horse to hire, for the purpose of going upon business from one town to another, and back again, in the compass of a day's journey, is not such a letting to hire, as subjects the owner of the horse to the penalty imposed by the 25 Geo. 3. c. 51. though he has not a licence. The words *travelling post*, are to be construed according to the popular acceptance of them. *The King* agst *Tooley*, 3 term. rep. B. R. 69.

A person who lets a horse to hire, for the purpose

pose of carrying a private express, must take out a licence under the 25 Geo. 3. c. 51. *The King agst Webber*, 3 term rep. B. R. 72.

The post horse duty imposed by 25 Geo. 3. c. 51. is not to be paid for horses employed in forwarding *public expresses* on the service of government. *The King agst Cook*, 3 term rep. B. R. 519.

H 2

SECTION

SECTION XV.

ABSTRACT OF THE ACT OF XXVI GEO. III.
C. LXXI. FOR REGULATING HOUSES, AND
OTHER PLACES, KEPT FOR THE PURPOSE
OF SLAUGHTERING HORSES.

Preamble. “ **W**HEREAS the practice of stealing
“ horses, cows, and other cattle, hath,
“ of late years, increased to an alarming degree,
“ and hath been greatly facilitated by certain
“ persons of low condition, who keep houses or
“ places for the purpose of slaughtering horses and
“ other cattle.” It is enacted, that no person
shall keep or use any house or place, for the
purpose of slaughtering or killing any horse, mare,
gelding, colt, filly, ass, mule, bull, ox, cow, heifer,
calf, sheep, hog, goat, or other cattle, *which shall
not be killed for butchers meat*, without first
taking out a license for that purpose, at the quarter
sessions, upon a certificate, under the hands and
seals of the minister and church-wardens, or over-
seers, or of the minister, and two or more sub-
stantial house-holders, of the parish wherein such
person shall dwell, that he is fit and proper to be
trusted with the management, and carrying on such
business. In case of the death of any person to
whom such license shall be granted, it shall be
lawful

License to
be taken
out at the
sessions.

Upon a
previous
certificate.

lawful for his widow or personal representative, to carry on the business, until the next sessions.

S. 1.

Every such license shall be signed by the majority of the justices, assembled at such sessions, and a copy thereof, shall be entered in a book to be kept for the purpose by the clerk of the peace, and every person may, at all times (Sundays excepted) between ten and twelve o'clock in the forenoon, search such book, and make extracts therefrom, paying for every search 6d. S. 2.

Book to be kept by the clerk of the peace.

And every person so licensed, shall cause to be painted or affixed over the door or gate of the house or place, where he shall carry on the said business, in large legible characters, his name, with the words "*licensed for slaughtering horses, pursuant to an act passed in the twenty-sixth year of his majesty King George the third.*" S. 2.

Certain words to be put up.

And every person so licensed, shall, at the time any horse, mare, &c. shall be brought for the purpose of slaughtering, killing or flaying, make an entry in a book to be kept for that purpose, in a fair legible hand, of the name, place of abode, and profession of the owner, and of the person bringing the same, and the reason why brought, which book shall at all times be open for the perusal of the inspector, and such licensed person shall produce the said book, before any one justice, when required by warrant or order; and shall

Book to be kept.

likewise produce the same at every quarter sessions.

S. 4.

Inspectors
to be ap-
pointed
and their
names put
up.

And such parishioners as by law are entitled to meet in vestry to choose parish officers, shall, in every parish wherein any slaughtering house shall be situated, annually, or oftener appoint, one or more proper person or persons, to inspect every such slaughtering house, who shall cause to be painted or affixed over the door of his house, his name, and the words, "*inspector of houses and places for slaughtering horses.*" S. 5.

Notice to
the inspec-
tor and his
duty.

Every occupier of such licensed slaughtering house, shall, six hours previous to the slaughtering of any horse, mare, &c. &c. and if brought dead to such slaughtering house, previous to the slaying thereof, give notice in writing to the inspector, to the intent that he may attend, and before any such horse, mare, &c. shall be slaughtered or slayed, take an exact account and description of the height, age, (as near as may be) colour and particular marks of every such horse, mare, gelding, colt, filly, ass, or mule, and the colour and particular marks of every such cow, &c. brought alive to be killed, or brought dead as aforesaid; and the same shall not be slaughtered or slayed, but between eight o'clock in the morning, and four o'clock in the evening, during the months of *Oct. Nov. Dec. Jan. Feb. and Mar.* and between six o'clock in the morning, and eight o'clock

o'clock in the evening, during the other months in the year ; and the inspector shall keep a book and make an entry of every such account and description, and every person carrying on such business shall, for every entry, pay the inspector 6d.

And all persons shall have access to the same at all times, between eight in the morning, and five in the evening, during *Oct. Nov. Dec. Jan. Feb. and Mar.* and between six in the morning, and eight in the evening, during the other months, paying for every search 6d. And in case the inspector shall have reason to believe, that any such horse, mare, &c. is free from disease, and in a sound and serviceable state, or that the same has been stolen or unlawfully come by, he shall prohibit the slaughtering thereof, for any time not exceeding eight days ; and, in the mean time, shall cause an advertisement or advertisements, to be inserted in the *Daily Advertiser*, or some newspaper circulated in the county where such slaughtering house shall be situated, twice or oftener, unless the owner shall sooner claim the same, or certify in writing, or otherwise satisfactorily inform the inspector, that he sent, or delivered the same to be slaughtered ; the expense of advertising to be paid by the occupier of such slaughtering house ; and if he shall refuse to pay the same, and shall be thereof convicted, on the oath of the inspector before one justice, he shall forfeit double the amount of the charge

charge of such advertisements, to be levied by distress. S. 3 and 5.

The inspector may, at all times, (but if in the night, in the presence of a constable) enter and inspect any slaughtering house, or place, kept by such licensed person, and also any stable, building, shed, yard or place belonging thereto, and search if any horse, &c. is deposited there, and take an account thereof. S. 6.

Persons
bringing
horses, &c.
to be
slaughter-
ed, to give
an account
of them-
selves.

And in case any person, who shall offer to sale, or bring any horse, mare, &c. to any person keeping such slaughtering house, to be slaughtered or slayed, shall not give a satisfactory account of himself, or of the means by which the same came into his possession, or if there shall be any reason to suspect that such horse, mare, &c. is stolen, or unlawfully obtained, it shall be lawful for the person, to whom the same shall be brought or offered to sale, and also for the inspector, to seize and detain such person, and also such horse, mare, &c. and to deliver such person to a constable, or other peace officer, who shall convey him before a justice, and if such justice shall, upon examination, have cause to suspect that such horse, mare, &c. is stolen, or unlawfully obtained, he may commit such person into safe custody, for any time not exceeding six days, in order to be further examined; and if, upon examination, such justice shall have reason to believe that such horse, mare, &c.

&c. is stolen, or illegally obtained, he shall commit such person to the common gaol, or house of correction, where the offence was committed, to be dealt with according to law. S. 7.

And if any person keeping or using any slaughtering house, shall slaughter or slay any slaughtering horse, mare, &c. other than for butchers meat, &c. without taking out such license, or giving such notice as aforesaid, and within the hours before limited, or shall not delay slaughtering the same, according to the direction of the inspector, he shall be guilty of felony, and shall be punished by fine, and imprisonment, and by public or private whipping, or transportation for seven years. S. 8.

And if any person keeping any such slaughtering house, shall throw into any lime-pit, or immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury the hide or skin of any horse, mare, &c. by him slaughtered or slayed, or shall be guilty of any offence against this act, for which no punishment or penalty is expressly provided, such person, being convicted thereof, shall be guilty of a *misdemeanor*, and shall be punished by fine, and imprisonment, and public or private whipping. S. 9.

And if any person so licensed, shall make any false entry, in any such book kept by him as aforesaid, he shall, being convicted thereof, on the oath of two credible witnesses before one justice, for

for every offence, forfeit any sum, not exceeding 20*l.* nor less than 10*l.* to be levied by distress; one moiety to be paid to the informer, and the other to the overseers of the poor, for the use of the poor of the parish where the offender shall reside; and in case he shall not have effects to the amount of the penalty, he may be committed to the house of correction, to hard labour, for any time not exceeding three months, nor less than one month.

S. 10.

Inspector's
book.

The book of every inspector shall be produced at every quarter sessions, and delivered to the justices, to be examined by them as they shall think fit. S. 12.

Lending of
slaughter-
ing houses.

And if any unlicensed person shall occasionally lend any house, or other place, for the purpose of slaughtering any horse &c. and shall be thereof convicted before one justice, where such person shall reside, upon the oath of two credible witnesses, he shall forfeit, for every offence, any sum not exceeding 20*l.* nor less than 10*l.* one moiety to the informer, and the other to the poor of the parish where the offence shall be committed; and in case such penalty shall not be forthwith paid, such justice shall commit the offender to the common gaol, or house of correction, without bail or mainprize, for any time not exceeding three calendar months, nor less than one, unless the penalty shall be sooner paid. S. 13.

This

This act shall not extend to any currier, felt-maker, tanner or dealer in hides, who shall kill any distempered or aged horse, &c. or purchase any dead one, for the *bonâ fide* purpose of selling, using or curing the hide thereof, in the course of their respective trades; nor to any farrier, employed to kill aged and distempered cattle; nor to any person who shall kill any of his own or other cattle, or purchase any dead horse or other cattle, to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose.

S. 14.

And if any collar-maker, currier, felt-maker, tanner, dealer in hides, farrier, or other person, shall, under colour of their respective trades or occupations, knowingly kill any sound or useful horse, gelding, mare, foal or filly, or boil or otherwise cure the flesh thereof, for the purpose of selling the same, he shall be deemed to be an offender within the meaning of this act, and shall, for every offence, forfeit a sum not exceeding 20*l.* nor less than 10*l.*

S. 15.

Witnesses (having been summoned) not appearing, or refusing to give evidence, shall forfeit 10*l.* and in default of payment, shall be committed to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one, unless the penalty shall be sooner paid.

S. 16.

The

The inhabitants of any parish shall be competent witnesses, notwithstanding their contributing to the rates, or being relieved or relievable by the parish, and entitled to receive benefit from the penalties. S. 17.

Any person sued for any thing done in pursuance of this act, may plead the general issue, and give the special matter in evidence; and if upon the trial a verdict shall pass for the defendant, or the plaintiff shall be nonsuited, the defendant shall have treble costs. S. 18.

The act contains three different forms of conviction.



FINIS.

